

DIAA Board of Directors' Meeting Minutes
October 8, 2009 – 9:00 a.m.
Collette Building

I. Opening

A. Call to Order

The meeting was called to order at 9:05 a.m. by DIAA Chairperson Gerald Kobasa.

B. Roll Call

The following DIAA Board members were present: Gerald Kobasa, Michael Wagner, Curtis Bedford, Eugene Montano, Edna Cale, Debbie Corrado, Joan Samonisky, Harvey Hyland, Susan Coffing, Robert Reed, Dr. Jeffrey Hawtof, Woody Long, Michael Modica, Randall O'Neal, Ron Eby, Dr. Michael Owens. Kevin Charles, Executive Director; and Paula Fontello, Deputy Attorney General were also in attendance. Ms. Catherine Marvel, Dianne Sole, Teresa Taylor, and Dr. George Stone were unable to attend.

C. Approval of Agenda

Mr. Kobasa stated that item III. G. Executive Director to Waive Rule 1008.2.7.2 was being added to the agenda. Dr. Hawtof made a motion to approve the agenda as amended. The motion was seconded by Ms. Cale and carried unanimously.

D. Approval of Minutes of September 10, 2009 Board of Directors' Meeting

Mr. Eby made a motion to approve the minutes of the September, 2009 Board of Directors meeting. The motion was seconded by Mr. O'Neal and carried unanimously.

E. DIAA Financial Report

Mr. Charles commented on the reporting period of September 3 through September 30. The income was \$63,000 which came from tournament fees, member dues and a reimbursement from the NFHS for the Student Leadership Conference. Mr. Charles stated that the expenses were \$34,433.00 which were primarily from purchases orders for the year, miscellaneous expenses, and salary and OEC. Mr. Charles acknowledged the deficit but stated that it is normal at this time of year. Ms. Samonisky made a motion to approve the financial report. The motion was seconded by Mr. O'Neal and carried unanimously.

III. Action Items

A. Approval of Tournament Sanctions

Mr. Charles stated that there are 44 sanction requests which include cross country, basketball, indoor track, wrestling, and outdoor track. Mr. Charles stated that they are all in compliance with NFHS and DIAA regulations and the applications are available for the Board's review. Dr. Hawtof made a motion to approve the sanction events. The motion was seconded by Ms. Corrado and carried unanimously.

G. Request by Executive Director to Waive 1008.2.7.2 for Football without Classification System

Mr. Charles explained that this is a situation that has evolved as a result of a couple of rule changes. Mr. Charles stated that there are two types of middle schools one that has 6, 7, and 8 grade students and the other has 7 and 8 grade students. Mr. Charles commented that our regulations prohibit 6th grade students from participating in football unless it is weight classified approved by the DIAA Board of Directors. Mr. Charles stated that the DISC schools play weight classified football but that the Henlopen conference schools do not. Mr. Charles further explained that our regulations also limit years of participation at the middle school level to four consecutive semesters in middle schools with 7th and 8th grade and to six consecutive semesters in middle schools with 6th, 7th, and 8th grade students. Mr. Charles explained that an unequal playing field has been established for the 6, 7, 8 grade students in the sport of football. Mr. Charles stated that he is suggesting adding language to regulation 1008.2.7.2.4 which would read "Students attending schools that offer football without a DIAA approved classification system shall have 4 consecutive semesters of eligibility to play football from the first time they enter the 7th grade." Mr. Charles stated that he took this issue to the Henlopen Conference athletic directors meeting and stated that there was no objection. Mr. Charles was asking the Board if he could offer a blanket waiver for this year and refer it to the Rules and Regulations Committee for future years. Dr. Owens suggested the Rules and Regulations Committee also consider updating the definition of middle schools to reflect current district policies.

Dr. Hawtof made a motion to support the blanket waiver for the 2009-2010 school year to Regulation 1008.2.7.2.4 to allow the middle schools to have four consecutive semesters of eligibility to play football from the first time that they enter 7th grade and send this to the rules and regulations committee for review. The motion was seconded by Ms. Coffing. Mr. Wagner commented that the student would still have to be age eligible. The motion carried unanimously.

C. Consideration of Interim Waiver by Executive Director of DIAA Reg. 1009.2.4 for F.F. of Dickinson HS

Student's parents requested a closed hearing. Mr. Reed made a motion to go into executive session for the purposes of protecting the pupil file as an exception to the Freedom of Information Act. The motion was seconded by Dr. Hawtof and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained there are 15 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in.

Ms. Coffing made a motion to go into deliberation. The motion was seconded by Mr. Eby and carried unanimously. Deliberations were held. Dr. Hawtof made a motion to come out of deliberation. The motion was seconded by Mr. Reed and carried unanimously. Mr. Reed made a motion to come out of executive session. The motion was seconded by Ms. Cale and carried unanimously.

Mr. Modica made a motion to approve the waiver for extreme financial hardship and the interim waiver granted by the executive director based on testimony given and letters received from both the sending and receiving schools stating that this was not for athletic purposes and based on the financial hardship. The motion was seconded by Ms. Cale and carried by a vote of 12 – yes (Kobasa, Bedford, Montano, Cale, Corrado, Samonisky, Hyland, Reed, Hawtof, Long, Modica, and Eby), 2 – no (Wagner and O'Neal), and 1 – abstention (Coffing).

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m.

B. Request for Waiver of DIAA Reg. 1008 & 1009.2.3 by Milford School District

Phyllis Kohl; principal at Milford High School, Glen Stevenson; athletic director at Milford High School, and Mark Dufendach; Chief Financial Officer at Milford School District were in attendance to present this request. Ms. Fontello stated that this will be an open hearing because there is no exception to go into a closed hearing unless you are protecting pupil file information and that does not appear to be the case with this request. Milford confirmed that they were not going to be presenting any individual pupil file information. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained there are 15 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. Mr. Stevenson explained to the Board that the Milford School District will

be changing the grade structure for next year due to the opening of a new Central Academy which will house their 8th and 9th grade students. Mr. Stevenson explained that they were asking for a waiver of DIAA Regulations 1008.2.3.1 and 1009.2.3.1 which states that a student must be legally enrolled in the school which he/she represents in order to participate in a practice, scrimmage, or contest. Mr. Stevenson stated that Milford was asking that the 9th grade students be allowed to participate with the high school and that the 8th grade students be allowed to participate at the middle school. Mr. Stevenson stated that Milford is asking for a one year waiver because of discussion with the executive director that this rule may be addressed in the near future. Ms. Kohl stated that the 8th grade students will not play up and that they will participate at the middle school. Mr. Wagner commented that he was in support of this waiver but that in a years time he would like to see the Central Academy's promotion policies since Milford's alignment of grades is so unique. Mr. Long made a motion to approve the waiver request as long as the 8th grade students play at the middle school and the 9th grade students play only at the high school and would like to refer this to the Rules and Regulations Committee. The motion was seconded by Ms. Corrado and carried unanimously.

D. Request for Waiver of DIAA Reg. 1009.2.4 by William Penn HS for L.B.

Student, student's mother, Chris Purnell; Director of Future Scholars, Mel Gardner; assistant athletic director at William Penn High School, and Denard Montgomery; student's mentor were in attendance to present this request. Student's parent requested a closed hearing. Dr. Hawtof made a motion to go into executive session for the purposes of protecting the pupil file as an exception to the Freedom of Information Act. The motion was seconded by Mr. Montano and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained the there are 15 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in.

Dr. Hawtof made a motion to go into deliberation. The motion was seconded by Ms. Coffing and carried unanimously. Mr. Modica made a motion to come out of deliberation. The motion was seconded by Mr. Wagner and carried unanimously. Mr. Reed made a motion to go back into deliberation. The motion was seconded by Dr. Hawtof and carried unanimously. Mr. Modica made a motion to come out of deliberation. The motion was seconded by Ms. Cale and carried unanimously. Mr. Modica made a motion to come out of executive session. The motion was seconded by Dr. Hawtof and carried unanimously.

Mr. Reed made a motion to grant the request based on the testimony given that the move was based on academic reasons and not for athletic purposes. The motion was seconded by Ms. Coffing and carried on a vote of 8 – yes (Kobasa, Cale, Corrado, Samonisky, Hyland, Coffing, Reed, Modica) 7 – no (Wagner, Bedford, Montano, Hawtof, Long, O'Neal, and Eby).

E. Request for Waiver of DIAA Reg. 1009.2.4 by Sussex Tech High School for C.P.

Chelsey Procino; student, Patty and Mike Procino; parents, and Joe Thomson; athletic director at Sussex Tech High School were in attendance to present this request. The parents requested an open hearing. Mr. Kobasa recused himself from this hearing and Mr. Wagner acted as Chair for this hearing.

Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained there are 11 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in.

Ms. Procino explained that they had applied for Chelsey to attend Sussex Tech HS for her freshman year but was not chosen in the lottery. She then enrolled Chelsey at Seaford High School. Ms. Procino further explained that Chelsey attended Seaford High School during her 9th and 10th grade and participated on the swim team and indoor track team. Ms. Procino explained that while Chelsey was on the track team she complained of back pain. Ms. Procino stated that after seeing a doctor Chelsey was diagnosed with Scoliosis. Ms. Procino commented that the doctor highly recommended that Chelsey go back to swimming. Ms. Procino stated that her son was chosen in the lottery to attend Sussex Tech and during a home visit from the school she asked if they could get Chelsey in for her junior year and Student eventually did get accepted. Mr. Procino stated that he was very happy that Chelsey was accepted to Sussex Tech. Mr. Procino commented that it was important for Chelsey to be on the swim team due to the Scoliosis. Ms. Procino stated that she wanted her children together in the same school and not three different schools.

Mr. Eby made a motion to grant the waiver because it was not for athletic purposes and the Student established a hardship based on evidence presented as well as medical reasons provided and that other family members attend the school. The motion was seconded by Mr. Montano and carried by a vote of 10 – yes (Wagner, Bedford, Montano, Cale, Corrado, Hyland, Coffing, Reed, Long, and Eby) 1 no – (Hawtof).

- F. Consideration of Interim Eligibility Waiver by Executive Director for DIAA Reg. 1009.2.4
1. By Delaware Military Academy for D. J.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Mr. Wagner made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Mr. Eby and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that the record contains a signed consent from the student's parent in this case in order to proceed under these modified procedure. Ms. Fontello stated that this full hearing is scheduled for the November 12 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. Mr. Charles was still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken. Ms. Corrado made a motion to come out of executive session. The motion was seconded by Mr. Eby and carried unanimously. Mr. Wagner made a motion to approve the two interim waiver request and grant the Student's waiver request based on Mr. Charles testimony and the record, Student established a hardship. The motion was seconded by Mr. Bedford and carried unanimously. The hearing scheduled for November 12, 2009 is cancelled.

2. By Newark HS for K.B.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Mr. Eby made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Coffing and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that the record contains a signed consent from the student's parent in this case in order to proceed under these modified procedure. Ms. Fontello stated that this full hearing is scheduled for the November 12 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. Mr. Charles was still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken. Mr. Reed made a motion to come out of executive session. The motion was seconded by Ms. Cale and carried unanimously. Ms. Corrado made a motion to approve the two interim waiver request and grant the Student's waiver request based on financial hardship. The motion

was seconded by Ms. Cale and carried unanimously. The hearing scheduled for November 12, 2009 is cancelled.

3. By Indian River HS for H.S.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Ms. Cale made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Mr. Hyland and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that the record contains a signed consent from the student's parent in this case in order to proceed under these modified procedure. Ms. Fontello stated that this full hearing is scheduled for the November 12 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. Mr. Charles was still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken. Ms. Cale made a motion to come out of executive session. The motion was seconded by Mr. Wagner and carried unanimously. Mr. Eby made a motion to approve the two interim waiver request and grant the Student's waiver request for eligibility passing work based on evidence and documentary reasons for the hardship presented. The motion was seconded by Mr. Long and carried unanimously. The hearing scheduled for November 12, 2009 is cancelled.

IV . Executive Director Report

Mr. Wagner made a motion to go into executive session to discuss potential litigation and strategy and legal advice as an exception to the FOIA. The motion was seconded by Ms. Cale and carried unanimously. There was some delay in clearing the room for the closed session and no business was conducted. Mr. Wagner made a motion to come out of executive session. The motion was seconded by Mr. Reed and carried unanimously. Mr. Charles reviewed the other items in the Executive Director's report including newspaper articles. While in executive session, the Board discussed potential litigation. Mr. Wagner made a motion to go back into executive session for the same reason as before. The motion was seconded by Mr. Reed and carried unanimously. While in executive session, the Board discussed potential litigation. Mr. Wagner made a motion to come out of executive session. The motion was seconded by Mr. Reed and carried unanimously.

V. Other

VI. Public Comment

None.

VII. Adjournment

Ms. Cale made a motion to adjourn at 2:20 p.m. The motion was seconded by Mr. Eby and carried unanimously.

Tina Hurley

Executive Session Minutes

IV. Legal Issues

During executive session the Board had potential litigation on budget cuts. Also Ms. Fontello reviewed the Florida case regarding Title IX and schedule cuts there. Ms. Fontello reviewed factual differences and gave options.